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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
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Report to Congress) CC Docket No. 96-45
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COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") submits these comments in response to the Public Notice issued by the Common Carrier Bureau on January 5, 1998, requesting input from interested parties regarding the FCC's Report to Congress regarding the implementation of Section 254 of the Communications Act.

I. INTRODUCTION

TCG appreciates this opportunity to contribute to the Commission's preparation of its report to Congress. The complexities of the telecommunications industry and the new approach to universal service embodied in the Act clearly warrant a progress review. TCG looks forward to working with the Commission as it works with Congress to implement the Act's universal service provisions.

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II. RESPONSES TO THE QUESTIONS POSED BY THE PUBLIC NOTICE

A. Definitions

TCG believes that the Commission's interpretation and implementation of the terms "information service," "local exchange carrier," "telecommunications," "telecommunications service," "telecommunications carrier," and "telephone exchange service" are generally consistent with the letter and intent of the Communications Act. Section 254(c)(1) mandates universal service support for "telecommunications services" as specified by the Commission. Section 3(46) of the Act defines "telecommunications service" as the offering of the transmission, between or among points specified by the user, of information of the user's choosing — without change in the form or content of the information sent and received — for a fee directly to the public, regardless of the facilities used.¹

The Act defines "telecommunications carrier" as any provider of telecommunications services.² For the high cost and low income portions of the universal service fund, the Commission has adhered to that definition for determining support-eligible services and support-eligible recipients. For the schools and libraries portion of the fund, however, the Commission has expanded the definition of support-eligible carriers to include non-telecommunications carriers. Because Section 254(h) specifically states that only telecommunications carriers are eligible for universal service support, the FCC has apparently gone

¹ 47 U.S.C. § 153(46).

² Id., § 153(44).

beyond the plain language of this section to provide support for non-telecommunications carriers.

B. Basis for Contributions and for Definition of Contributor (Sec. 254(d))

Under Section 254(d) of the Act, all providers of “interstate telecommunications services” must contribute to the federal universal service fund on an “equitable and non-discriminatory basis.” In addition, the FCC may require other providers of interstate services to contribute “if the public interest so requires.”³ Some controversy has arisen over the fact that the Commission is not assessing Internet service providers (“ISPs”). As information service providers, ISPs clearly are not required by the plain language of the statute to contribute. For the Commission to require ISPs to contribute as “other providers of interstate services,” it would have to find that doing so was in the public interest, as the Act plainly requires.

C. Support Eligibility under Sections 254(e), 254(h)(1), and 254(h)(2)

Section 254(e) applies to a carrier’s eligibility for universal service support other than for health care or schools and libraries, i.e., carrier eligibility for the high cost and low income portions of the fund only. According to Sections 254(e) and 214(e), support is available only to telecommunications carriers that:

offer the services that are supported by the Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and

³ Id., § 254(d).

advertise the availability of such services and the charges therefor using media of general distribution.⁴

The ultimate responsibility for designating an eligible carrier rests with the state commission, which also has the right to designate the service territory that a carrier must serve to be eligible for Federal universal service funding. The FCC rules incorporate the statutory language verbatim and otherwise comport with the statute.

Section 254(h)(1) governs the obligations of telecommunications carriers with regard to the universal service mechanism for rural health care providers and for schools and libraries. This section clearly states that telecommunications carriers shall receive offsets to their universal service contributions, or direct reimbursement, for the amount of the discount offered to eligible institutions. There are no other qualifications for receiving support. The Act's definition of "telecommunications carrier," however, would exclude ISPs and others that do not otherwise provide telecommunications services. Section 54.517 of the Commission's rules, which allows non-telecommunications carriers to receive universal service support for providing Internet access and installation and maintenance of internal connections, appears to go beyond the plain language of the Act.

Section 254(h)(2) requires the Commission to establish "competitively neutral rules" to increase the availability of advanced telecommunications services

⁴ Id., § 214(e)(1)(A) and (B).

and information services to elementary and secondary schools. It also requires the Commission to develop rules that will “define the circumstances under which a telecommunications carrier may be required to connect its network” to public primary and secondary schools.⁵ In its discussion of this section, the FCC noted that only telecommunications carriers would be eligible for support under this section, regardless of the type of service provided.⁶ The Commission noted that telecommunications carriers might subcontract these services, allowing non-telecommunications carriers to indirectly receive support. The rules themselves, however, by allowing non-telecommunications carriers to receive support directly, appear to go beyond the plain language of the Act.

D. Federal Share of Universal Service Support and the Respective Revenue Base

There is nothing in Section 254 of the Act that specifies the share of the universal service funding requirement that should be borne by the Federal universal service mechanism. The references to state universal service mechanisms (e.g., Sections 254(b)(5) and 254(f)) indicate that Congress did not expect the Federal mechanism be the sole source of universal service support. Section 254 does require the Commission to implement the recommendations of the Federal-State Joint Board, and it appears as though the Commission has done just that. The Joint Board did not recommend specific shares of support to be funded by state

⁵ Id., § 254(h)(2).

⁶ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, FCC 97-157 (rel. May 8, 1997) at ¶ 453.

and federal mechanisms. After apparent contentious debate, however, the Joint Board did recommend that only interstate services be assessed for contributions to the high cost portion of the fund. Consistent with that recommendation, the Commission determined that the Federal universal service fund will support 25% of the difference between the cost of providing the supported services and the revenue benchmark. The 25% figure is derived from the current jurisdictional separations factor.⁷

With regard to the funding base for high cost and low income households, the Commission's decision to assess only interstate services is consistent not only with its decision to fund only the interstate portion of the support requirement, but also with Section 254(f). This provision permits state universal service mechanisms so long as they "do not rely on or burden federal universal service support mechanisms."⁸ To avoid a situation in which state and federal programs are assessing the same revenue base to fund their separate programs, the Commission correctly refrained from assessing intrastate revenues. To the extent that a state wishes to implement its own universal service mechanism for high cost and low income households, it may assess intrastate revenue without creating a conflict with the federal mechanism.

With regard to the mechanism for schools and libraries, the Act states that the states shall determine the discount for intrastate services to schools and

⁷ Id. at ¶ 269.

⁸ 47 U.S.C. § 254(f).

libraries. The Act further provides that carriers that provide discounted services will either be reimbursed from the universal service mechanisms (Section 254(h)(1)(B)(ii)) or have the amount of the discount treated as an offset to the carrier's contribution to the mechanisms (Section 254(h)(1)(B)(ii)). The Act does not indicate whether all of the reimbursement or offset applies to the federal mechanisms only or to both state and federal mechanisms. The Commission has decided that the Federal mechanism will provide support for both inter- and intrastate rate discounts. Because it is supporting both services, therefore, the Commission has determined that it is reasonable and logical to assess revenue in both jurisdictions. The Commission made Federal universal service support to a state contingent upon the state's approval of the same discount schedule for intrastate services as the Commission has established for interstate services. Such an approach ensures that the discounts are properly calibrated to the needs of the beneficiaries.

III. CONCLUSION

The FCC appears to have operated within the plain language of Section 254 of the Communications Act with regard to the universal service mechanism for high cost and low income households. With respect to the schools and libraries portion of the mechanism, the Commission appears to have gone beyond the plain

language of the Act by allowing non-telecommunications carriers to be eligible for universal service support to schools and libraries.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.



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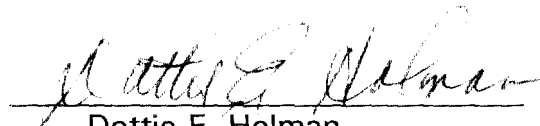
CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Comments of Teleport Communications Group was sent by hand-delivery this 26th day of January, 1998, to the following:

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